

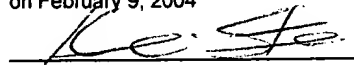


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on February 9, 2004

  
Kevin J. Stein  
Reg. No. 47,966  
Attorney for Appellant(s)

02/09/04  
Date of  
Signature

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Customer No.: 000201  
Attorney Docket No.: C6530(C)  
Appellants: Giblin et al.  
Serial No.: 09/224,229  
Filed: December 30, 1998  
For: Manufactured Pour Spout Fitment And Container

Group: 3751  
Examiner: P. Devore  
Edgewater, New Jersey 07020  
February 9, 2004

**BRIEF FOR APPELLANTS**

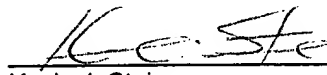
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Sir:

Enclosed herewith are three (3) copies of an Appeal Brief for Appellants.

Please charge the \$330.00 fee to our Deposit Account No. 12-1155. Any deficiency or overpayment should be charged or credited to this Deposit Account. This authorization is submitted in triplicate.

Respectfully submitted,

  
Kevin J. Stein  
Registration No. 47,966  
Attorney for Applicant(s)

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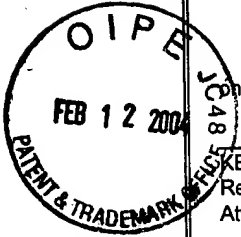
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**PATENT**

On February 9, 2004

KEVIN J. STEIN  
Reg. No. 47,966  
Attorney for Appellant(s)

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Customer No.: 000201  
Attorney Docket No.: C6588(C)  
Appellants: Saso et al.  
Serial No.: 09/734,792  
Filed: December 12, 2000  
For: Shipping Case Alternative

Group: 3728  
Examiner: L. Bui  
Edgewater, New Jersey 07020  
February 2, 2004

**BRIEF FOR APPELLANTS**

Edgewater, New Jersey 07020  
February 9, 2004

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellants: Saso et al.  
Serial No.: 09/734,792  
Filed: December 12, 2000  
For: Shipping Case Alternative

Group: 3728  
Examiner: L. Bui  
Edgewater, New Jersey 07020  
February 9, 2004

**BRIEF FOR APPELLANTS**

**TABLE OF CONTENTS**

I. Real Party In Interest .....	3
II. Related Appeals and Interferences .....	4
III. Status of Claims.....	5
IV. Status of Amendments .....	6
V. Summary of the Invention .....	7
VI. Issues for Appeal.....	11
VII. Grouping of Claims.....	12
VIII. Appellant's Arguments.....	13
IX. Conclusion.....	17
X. Appendix .....	21

### **I. REAL PARTY IN INTEREST**

The real party in interest is Unilever Home and Personal Care USA, Division of CONOPCO, Inc., a corporation of New York having a principal place of business at 33 Benedict Place, Greenwich, Connecticut 06830.

## **II. RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences.

### **III. STATUS OF CLAIMS**

There are twenty-five (25) claims currently pending. The present application was initially filed with 30 claims. During prosecution, claims 14, 18, 29 and 30 were withdrawn from consideration in response to a restriction requirement. Additionally, claim 26 was cancelled during prosecution. Accordingly, the pending claims are independent claims 1, 20 and 22, and dependent claims 2-13, 15-17, 19, 21, 23-25, 27 and 28. All of these claims have been finally rejected and are currently on appeal.

#### **IV. STATUS OF AMENDMENTS**

There was a response to a restriction requirement and two amendments presented in this case prior to final rejection. Both of the amendments were entered. No amendments were submitted after the Final Office Action dated July, 9, 2003.

#### **IV. SUMMARY OF THE INVENTION**

The present application relates to secondary packaging comprising, among other components, shrink wrapping of multiple packages into a single unit, wherein the shrink wrap has at least one film which is opaque.

Claim 1 recites a combination of two or more packages juxtaposed to form a unit, the unit being shrink wrapped in two or more films on opposite film sides of said unit, wherein at least one of said films is opaque and at least one of said films is clear. Support is found in the specification at page 5, lines 10-12.

Claim 2 requires that the shrink wrapped films include a pair of gripping openings, the openings being disposed at opposite ends of the unit, and the ends being other than said film sides. Support is found in the specification at page 5, lines 22-27.

Claim 3 requires that the films are heat sealed to each other on at least two opposite heat seal sides of the unit, the heat seal sides being intermediate the at least two film sides. Support is found in the specification at originally filed claim 3.

Claim 4 requires a single line of zipper perforations extending in at least one of the films at least along one of the film sides. Support is found in the specification at page 6, lines 1-6.

Claim 5 requires gripping openings on opposite sides of the perforations in the film side. Support is found in the specification at page 6, lines 1-6.

Claim 6 requires at least one of the opaque film is at least 1 mil. thicker than said at least one clear film. Support is found in the specification in original claim 6.



Claim 7 requires that at least one of the opaque film has a thickness of from 1 to 5 mils (thousands of an inch) and at least one the clear film has a thickness of from 1 to 5 mils. Support is found in the specification at page 8, lines 7-14.

Claim 8 requires one of the films to include a tear strip defined by spaced zipper perforations in the film along two lines at least partially parallel to a longitudinal axis of the unit. Support is found in the specification at page 7, lines 1-5.

Claim 9 requires one of the films to include a tear strip defined by spaced zipper perforations in the film extending between the gripping openings along two lines extending partially in one of the film sides parallel to a longitudinal axis of the unit. Support is found in the specification at page 7, lines 1-5.

Claim 10 requires zipper perforations in the shrink wrap on each heat seal side extending parallel to a longitudinal axis of the unit. Support is found in the specification at page 7, lines 1-9.

Claim 11 requires zipper perforations in the shrink wrap extending from one of the openings to the other, partially extending through each heat seal side parallel to a longitudinal axis of the unit. Support is found in the specification at page 7, lines 1-9.

Claim 12 requires that the packages are cartons. Support is found in the specification at page 10, line 20.

Claim 13 requires that the cartons are comprised of corrugated fiberboard, having corrugations extending in a direction perpendicular to a longitudinal axis of the unit and perpendicular to a plane of one of the film sides. Support is found in the specification at page 11, lines 4-5 and originally filed claim 13.

Claim 15 requires that the unit is not contained within a shipping case. Support is found in the specification at page 10, lines 21-23.

Claim 16 requires that the unit comprises from 2 to 4 packages. Support is found in the specification in originally filed claim 16.

Claim 17 requires that the packages are cartons. Support is found in the specification at page 10, line 20.

Claim 19 requires a line of zipper perforations extending from one of the openings to the other and extending through one of the film sides, and further comprising opposed gripping apertures on opposite sides of the line of perforations on the film side. Support is found in the specification at page 6, lines 17-25.

Claim 20 recites a combination of two or more packages juxtaposed to form a unit, the unit being shrink wrapped in two or more films on film sides of the unit, the film sides being on opposite sides of the unit and including a line of zipper perforations along one of the film sides, the unit further comprising gripping apertures on opposite sides of the line of perforations in the film side. Support is found in the specification at page 6, lines 17-25.

Claim 21 requires that the zipper perforations are in a film which is clear to a UPC bar code reader. Support is found in the specification at page 9, lines 24-27.

Claim 22 recites a combination of two or more packages juxtaposed to form a unit, the unit being shrink wrapped in two or more films on opposite sides of the unit, one of the films being non-opaque and including a tear strip defined by zipper perforations in the film along two lines spaced in at least one of the film sides parallel to a longitudinal axis of the unit, the other of the films being opaque. Support is found in the specification at page 9, lines 16-27.

Claim 23 requires the shrink wrapped films to include gripping openings at opposite ends of the unit and the tear strip further extends along two lines perpendicular to the longitudinal axis from the openings to the film sides. Support is found in the specification at page 8, lines 23-29.

Claim 24 requires that the packages comprise cartons and that the cartons are made of corrugated fiberboard, having corrugations extending in a direction perpendicular to a longitudinal axis of the unit and perpendicular to a plane of one of the film sides. Support is found in the specification in originally filed claim 24.

Claim 25 requires that the packages comprise cartons and the cartons comprise corrugated fiberboard, having corrugations extending in a direction perpendicular to a longitudinal axis of the unit and perpendicular to a plane of one of the film sides. Support is found in the specification in originally filed claim 25.

Claim 27 requires that at least one line of perforations as an opening device. Support is found in the specification in originally filed claim 27.

Claim 28 requires that the tear strip extends 90% of the length of the film side. Support is found in the specification in originally filed claim 28.

## VI. ISSUES FOR APPEAL

The Issues that remain in the case are defined by the Examiner's rejections and are as follows:

- I. Whether claims 1, 3, 4, 6, 7, 10, 12, 13, 15-17, 22, 24, 25, 27 and 28 are obvious under 35 U.S.C. §103(a) over Limousin (U.S. Patent No. 4,586,312) in view of Lundquist et al. (U.S. Patent No. 4,720,410).
- II. Whether claims 2, 5, 8, 9, 11 and 19 are obvious under 35 U.S.C. §103(a) over Limousin (U.S. Patent No. 4,586,312) in view of Lundquist et al. (U.S. Patent No. 4,720,410) in further view of Tsuchiya et al. (U.S. Patent No. 5,067,612).
- III. Whether claims 22, 21 and 23 are obvious under 35 U.S.C. §103(a) over Limousin (U.S. Patent No. 4,586,312) in view of Tsuchiya et al. (U.S. Patent No. 5,067,612).

## **VII. GROUPING OF CLAIMS**

All claims stand or fall together, for all grounds of rejection.

### VIII. APPELLANTS' ARGUMENTS

I. Whether claims 1, 3, 4, 6, 7, 10, 12, 13, 15-17, 22, 24, 25, 27 and 28 are obvious under 35 U.S.C. §103(a) over Limousin (U.S. Patent No. 4,586,312) in view of Lundquist et al. (U.S. Patent No. 4,720,410).

Claims 1, 3, 4, 6, 7, 10, 12, 13, 15-17, 22, 24, 25, 27 and 28 have been rejected under 35 USC §103(a) as being unpatentable over Limousin (4,586,312) in view of Lundquist (4,720,410). It is asserted that Limousin discloses all of the claim limitations with the exception of at least one of the films being opaque and at least one of the films being clear. Lundquist is cited as teaching a package holding articles comprising a top sheet that is transparent and a bottom sheet that is opaque. It is asserted that it would have been obvious to one having ordinary skill in the art in view of Lundquist to modify the films of Limousin to arrive at the present invention.

Unlike the combined teaching of the cited prior art, the present invention as claimed is directed to a combination of multiple packages which are juxtaposed to form a single unit, and wherein the unit is shrink wrapped with two or more films. At least one of the shrink wrap films is opaque. By having at least one of the shrink wrap films opaque, at least a portion of the shrink wrapped unit is sufficiently resistant to the transmission of light such that UPC bar codes present on the individual packages cannot be read through the film by bar code reading machines. The combined unit can have its own bar code such that when the unit is identified by a bar code reading machine, only the bar code associated with the combined unit will be read as opposed to the bar codes of each individual package which makes up the combined unit.

Limousin is recognised in the Final Office Action as lacking any teaching regarding at least one of the films of the shrink wrap being opaque and at least one being clear. Lundquist is cited as providing this teaching. However, Lundquist is not

relevant art. Lundquist is concerned with primary packaging of articles versus the present invention which is concerned with secondary type packaging that is used to bundle numerous packages together. Lundquist is concerned with primary packaging for articles such as bacon and providing packaging that keeps the product fresh and is able to be cooked in the package which enables sufficient venting during cooking. The present invention is directed specifically to secondary packaging in which packaged products are then bundled in secondary packaging for purposes of, for example, delivery or the selling of numerous packages together as one sale item. Primary and secondary packing are different types of packaging as is evident from the problems being solved in Lundquist as versus the present invention. For instance, Lundquist is concerned with keeping the packaged products fresh and providing sufficient venting during cooking, whereas the present invention is concerned with benefits gained with using the presently claimed type of secondary packaging when packaging multiple packages together. One skilled in the art would not look towards primary packaging, especially primary packing concerning providing freshness and sufficient venting during cooking, when trying to solve the problems the present invention solves.

**II. Whether claims 2, 5, 8, 9, 11 and 19 are obvious under 35 U.S.C. §103(a) over Limousin (U.S. Patent No. 4,586,312) in view of Lundquist et al. (U.S. Patent No. 4,720,410) in further view of Tsuchiya et al. (U.S. Patent No. 5,067,612).**

Claims 2, 5, 8, 9, 11 and 19 have been rejected under 35 USC §103(a) as being unpatentable over Limousin and Lundquist as applied above and in further view of Tsuchiya (5,067,612). Limousin is recognised as failing to teach the openings being on opposite sides of the perforations in the film side. Tsuchiya is cited as teaching in embodiment 13 a package with at least a pair of perforations with a notch opening and a pair of openings in opposite sides of the perforations. It is stated that it would have been obvious to one of ordinary skill in the art to modify the gripping apertures of Limousin in view of the teachings of Tsuchiya so the

gripping apertures are disposed on opposite sides of the line of perforations to facilitate carrying.

Applicant repeats their previous argument that Lunquist's not relevant art for the reasons discussed above.

Furthermore, Limousin not only does not teach the placement of perforations and apertures as claimed in the present invention, but actually teaches away from the present invention as claimed. Limousin teaches the specific relative location of the perforation and apertures as having a specific purpose, namely subjecting the perforations to less heat than the apertures during fabrication. Accordingly, not only is the presently claimed invention not disclosed in Limousin, but it is actually taught away from. Furthermore, the teachings in Tsuchiya are at odds with the teaching of Limousin and therefore one skilled in the art would not combine the teachings of Limousin in view of the teachings of Tsuchiya.

**III. Whether claims 22, 21 and 23 are obvious under 35 U.S.C. §103(a) over Limousin (U.S. Patent No. 4,586,312) in view of Tsuchiya et al. (U.S. Patent No. 5,067,612).**

Claims 20, 21, and 23 have been rejected under 35 USC §103(a) as being unpatentable over Limousin in view of Tsuchiya. Limousin is recognised as failing to teach the openings being on opposite sides of the perforations in the film side. Tsuchiya is cited as teaching in embodiment 13 a package with at least a pair of perforations with a notch opening and a pair of openings in opposite sides of the perforations. It is stated that it would have been obvious to one of ordinary skill in the art to modify the gripping apertures of Limousin in view of the teachings of Tsuchiya so the gripping apertures are disposed on opposite sides of the line of perforations to facilitate carrying.

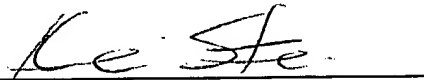


As previously stated, Limousin not only does not teach the placement of perforations and apertures as claimed in the present invention, but actually teaches away from the present invention as claimed. Limousin teaches the specific relative location of the perforation and apertures as having a specific purpose, namely subjecting the perforations to less heat than the apertures during fabrication. Accordingly, not only is the presently claimed invention not disclosed in Limousin, but it is actually taught away from. Furthermore, the teachings in Tsuchiya are at odds with the teaching of Limousin and therefore one skilled in the art would not be combine the teachings of Limousin in view of the teachings of Tsuchiya.

## IX. CONCLUSION

Appellants respectfully request the Board of Patent Appeals and Interferences to reverse the Examiner's final rejection.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kevin J. Stein", is written over a horizontal line.

Kevin J. Stein  
Registration No. 47,966  
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**APPENDIX OF CLAIMS (37 C.F.R. 1.192(c)(9))**

The text of the claim involved in the appeal is:

1. A combination of two or more packages juxtaposed to form a unit, said unit being shrink wrapped in two or more films on opposite film sides of said unit, wherein at least one of said films is opaque and at least one of said films is clear.
2. The combination of claim 1 wherein said shrink wrapped films include a pair of gripping openings, said openings being disposed at opposite ends of said unit, said ends being other than said film sides.
3. The combination of claim 1 wherein said films are heat sealed to each other on at least two opposite heat seal sides of said unit, said heat seal sides being intermediate said at least two film sides.
4. The combination of claim 1 further comprising a single line of zipper perforations extending in at least one of said films at least along one of said film sides.
5. The combination of claim 4 further comprising gripping openings on opposite sides of said perforations in said film side.
6. The combination of claim 1 wherein at least one said opaque film is at least 1 mil. thicker than said at least one clear film.
7. The combination according to claim 1 wherein at least one said opaque film has a thickness of from 1 to 5 mils (thousands of an inch) and at least one said clear film has a thickness of from 1 to 5 mils.

8. The combination of claim 1 wherein one of said films includes a tear strip defined by spaced zipper perforations in said film along two lines at least partially parallel to a longitudinal axis of said unit.
9. The combination of claim 2 wherein one of said films includes a tear strip defined by spaced zipper perforations in said film extending between said gripping openings along two lines extending partially in one of said film sides parallel to a longitudinal axis of said unit.
10. The combination of claim 1 comprising zipper perforations in said shrink wrap on each heat seal side extending parallel to a longitudinal axis of said unit.
11. The combination of claim 2 further comprising zipper perforations in said shrink wrap extending from one of said openings to the other, partially extending through each heat seal side parallel to a longitudinal axis of said unit.
12. The combination of claim 1 wherein said packages are cartons.
13. The combination of claim 12 wherein said cartons are comprised of corrugated fiberboard, having corrugations extending in a direction perpendicular to a longitudinal axis of said unit and perpendicular to a plane of one of said film sides.
15. The combination according to claim 1 wherein said unit is not contained within a shipping case.
16. The combination according to claim 1 wherein said unit comprises from 2 to 4 packages.
17. The combination according to claim 12 wherein said packages are cartons.

19. The combination according to claim 2 further comprising a line of zipper perforations extending from one of said openings to the other and extending through one of said film sides, and further comprising opposed gripping apertures on opposite sides of said line of perforations on said film side.

20. A combination of two or more packages juxtaposed to form a unit, said unit being shrink wrapped in two or more films on film sides of said unit, said film sides being on opposite sides of said unit and including a line of zipper perforations along one of said film sides, said unit further comprising gripping apertures on opposite sides of said line of perforations in said film side.

21. The combination of claim 20 wherein said zipper perforations are in a film which is clear to a UPC bar code reader.

22. A combination of two or more packages juxtaposed to form a unit, said unit being shrink wrapped in two or more films on opposite sides of said unit, one of said films being non-opaque and including a tear strip defined by zipper perforations in said film along two lines spaced in at least one of said film sides parallel to a longitudinal axis of said unit, the other of said films being opaque.

23. The combination of claim 22 wherein said shrink wrapped films include gripping openings at opposite ends of said unit and said tear strip further extends along two lines perpendicular to said longitudinal axis from said openings to said film sides.

24. The combination of claim 20 wherein said packages comprise cartons and said cartons are made of corrugated fiberboard, having corrugations extending in a direction perpendicular to a longitudinal axis of said unit and perpendicular to a plane of one of said film sides.

25. The combination of claim 22 wherein said packages comprise cartons and said cartons comprise corrugated fiberboard, having corrugations extending in a direction perpendicular to a longitudinal axis of said unit and perpendicular to a plane of one of said film sides.

27. The combination according to claim 1 having at least one line of perforations as an opening device.

28. The combination of claim 9 wherein said tear strip extends 90% of the length of said film side.